IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 210 OF 2001

Pravin Narayan Patil, age 20 years, occupation business, residing at Village Sarade, Taluka Uran, District : Raigad. (Presently at Yerwada Central Prison, Pune). ..) .. Appellant (Original Accused No.1)

Versus

The State of Maharashtra, (At the instance of Uran Police SAtation, (Vide C. R. No. 1 - 17/98 Sessions Case No. 144/98.) .. ..Respondent (Original Complainant)

Shri. Chaitanya Pendse, i/b Shri. P. B. Patil, for the Appellant-Original Accused No. 1.

Smt. V. R. Bhosale, A. P. P., for the Respondent-State.

CORAM: S.B.MHASE &
S.R.SATHE, JJ.
DATE : SEPTEMBER 30, 2005

ORAL JUDGMENT (PER S.R.SATHE, J.)

. The Appellant- original Accused No. 1 in Sessions Case No. 144 of 1998 has preferred this appeal against the judgment and order passed by the learned Additional Sessions Judge, Raigad, whereby the accused was convicted for the offence punishable under section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs. 100/-, in default, to

suffer rigorous imprisonment for one month. The accused was also convicted under section 37 (1) read with section 135 of the Bombay Police Act and sentenced to suffer rigorous imprisonment for four months and to pay fine of Rs. 50/-, in default, to suffer rigorous imprisonment for one month.

2. Briefly stated, the facts giving rise to this appeal are as under:

. Complainant Sujit Balkrishna Patil (P. W.1) is a cousin brother of the deceased Kishor Jagannath Patil and witness Sameer Abhimanyu Patil (P. W. 5). All of them were residing at Village Sarde, Taluka Uran. The complainant's sister Smt. Pushpalata Laxman Patil was serving as a Sevika in Anganwadi. On the day prior to the incident, Accused No. 5 Jeevan Chhagan Patil had told Pushpalata that she was not capable of serving in the said Anganwadi and, on that count, there was some dispute between them. However, the same was settled.

3. On 29.1.1998 at about 3-15 P.M., when the complainant Sujit Patil (P. W. 1) was proceeding towards Radha-Krishna Temple, Accused No.1 -Pravin Patil was cleaning the space in front of his stall. After seeing

the complainant proceeding in that direction, Accused No.1 told the mother of Accused No. 5 that he would be deposing in favour of her son. When the complainant heard the same, he asked accused No.1 as to why he was speaking about the quarrel when everything was settled on the previous day. On so saying, Accused No.1 gave a blow with a broom, which was in his hand, on the forehead of the complainant. The complainant, therefore, started proceeding towards his house. At that very time, his mother, Kishor Patil and Samir Patil were coming in that direction. The complainant narrated the incident to them. Hence all of them went to the mother of the deceased Kishor to ask her as to why her son behaved accordingly. However, she started abusing them. Hence all of them proceeded towards the stall of the deceased Kishor Patil. By that time, Accused No. 1 came from the opposite side. He was holding one knife in the right hand and other in the left hand. After seeing Kishor, he asked as to why they brought Kishor. On so saying, Accused No. 1 gave blows with the knives, which were in his hands, on the chest and stomach as well as on the hand of the deceased Kishor. On that Kishor ran towards the house of Jayram Patil and sat there. The complainant and Sameer Patil then took the injured Kishor to the Police Station. Finding that Kishor had sustained

grievous injuries, he was immediately sent to Indira Gandhi Primary Health Centre, Uran. The doctor on duty, namely, Dr. Balasaheb Sambhajirao Sonawane (P.W.6) examined him and found that the knife had stuck in his body. He, therefore, removed the said knife and handed over the same to the Police. He also started giving treatment to the injured Kishor. By that time, P.S.I. Jibram Mahadu Mahajan (P. W. 10) reached to the hospital. He asked doctor Sonawane (P.W. 6) as to whether the injured Kishor was in a position to give statement. When Dr. Sonawane told him that the injured was in a position to give statement, P.S.I. Mahajan (P.W. 10) recorded the statement of Kishor in the presence of Dr. Sonawane (P.W.6) and also obtained the necessary endorsement. Thereafter Kishor was removed to Sion Hospital where he died at midnight. In the meantime, the complainant went to the Police Station and filed a complaint. It was registered at C. R. No. 17/1998 for the offences punishable under sections 307, 504 and 323 of the Indian Penal Code. Police also attached the knife (Article 1), which was taken out by the doctor from the body of Kishor. The Police then visited the place of offence and drew the Panchanama and recorded statements of other witnesses and arrested Pravin (present appellant) on 3.2.1998. When the accused

Pravin was in Police custody, he made a statement that he would point out the clothes on his person and accordingly the Police drew the memorandum and then the accused led Police and the Panchas near a culvert from where he produced the clothes. The Police attached the said clothes under the Panchanama. In the meantime, the Police had also obtained the post-mortem report. The Police then sent the attached property to the Chemical Analyser. After obtaining the Chemical Analyser's report and completing the investigation, Police submitted charge-sheet against Accused Nos. 1 to 6 in the Court of Judicial Magistrate, First Class, Uran for the offences punishable under sections 302 and 504 of the Indian Penal Code and section 37 (1) read with section 135 of the Bombay Police Act.

4. Finding that the Accused were charged for the offence exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Uran committed the case to the Sessions Court, Raigad. The learned Additional Sessions Judge, Raigad framed charge (Exhibit 15) against all the Accused for the offences mentioned above. The charge was read over and explained to the Accused. All the accused pleaded not guilty and claimed to be tried.

5. From the suggestions put to the prosecution witnesses and from the statements of the Accused recorded under section 313 of the Code of Criminal Procedure, 1973, it appears that the defence of the Accused is of total denial. It is their contention that the complainant and his associates , infact, assaulted the deceased Kishor.

6. In order to bring home the guilt of the Accused, the Prosecution has examined in all twelve witnesses, consisting of complainant Sujit Patil (P.W. 1), Sameer Abhimanyu Patil (P.W.5), who are the eye witnesses to the incident. Then the Prosecution examined the Panch witnesses Ganesh Mhatre (P.W.2), Laxman Patil (P.W. 3); and Gurunath Gharat (P.W.4), who acted as a Panch for the discovery of the clothes of the Accused. The medical evidence consists of Dr. Balasaheb Sonawane (P.W.6), who examined the injured Kishor for the first time, and Dr. Prashant Samberkar (P.W. 7), who did the post-mortem. Then there is the evidence of Jagannath Patil (P.W.8), the father of the deceased Kishor; P.S.I. Shankar Mohite (P.W.9), P.S.I. Jioram Mahajan (P.W.10) who recorded the dying declaration, P.I. Premnath Sonawane (P.W.11), another investigating officer; and Dr. Jayantkumar Balsadkar (P.W.12) from the Sion Hospital. The Prosecution produced the Panchanama of the place of

offence, the panchanama of the seizure of the knife in question (Exhibit 39), Panchanama of clothes of the accused ;produced by him (Exhibit 43), post-mortem notes (Exhibit 57), medical certificate (Exhibit 51) and the dying declaration (Exhibit 52A).

7. After considering the evidence adduced by the Prosecution, the learned Additional Sessions Judge, Raigad came to the conclusion that the Prosecution has proved beyond reasonable doubt that the accused No.1 only has committed murder of Kishor. He, therefore, passed the order of conviction and sentence against accused No. 1, but acquitted accused Nos. 2 to 6 of all the charges levelled against them.

8. Being aggrieved by the said order of conviction and sentence, the accused No.1 has filed the present appeal. In this appeal before us, Shri. Pendse, learned advocate appearing for the accused, has urged three points. Firstly, he submitted that the learned trial Judge has not properly appreciated the evidence on record and has failed to consider the point that there were no bloodstains at the place of offence. According to him, it, in fact, creates a doubt about the place of offence and the testimony of the alleged eye-witnesses.

Secondly, he canvassed before us that the learned trial Judge has failed to consider the aspect that after the alleged assault, the deceased was not in proper mental condition. So according to him, the dying declaration should not have been accepted. He also submitted that considering the discrepancies and lacunae in the evidence, the learned trial Judge ought to have held that the Prosecution has failed to prove beyond reasonable doubt that the accused has committed the offence in question. He, therefore, submitted that the appeal be allowed and the accused be acquitted of all the offences.

9. As against this, Smt. Bhosale, learned A.P.P., supported the judgment and order passed by the learned trial Judge.

10. The relationship between the deceased Kishor, the complainant and the eye-witnesses is not in dispute. It is also an admitted fact that at the relevant time in Village Sarde, there were two political groups. The accused were belonging to the Peasants and Workers Party while the complainant Sujit Patil and his associates were belonging to the Congress Party. Thus there was a party faction in the said village. From the cross-examination of the Prosecution witnesses, it is very clear that it

is, in fact, not disputed by the defence that the death of Kishor is homicidal. Even otherwise, if we take into consideration the evidence of Dr. Sonawane (P.W.6) as well as the evidence of the two other doctors and see the medical certificate as also the post-mortem notes (Exhibit 57), then it is very clear that there were as many as three internal injuries on the person of Kishor when he was first taken to Municipal Hospital, Uran. The same are described in the medical certificate (Exhibit 51 C) as follows :

"i) Incised stab wound 2 x 1 x 15 (cavity deep) (approx.), left flank, grievous.

ii) Incised stab wound 1 x 1 x 1 cm., left side of umbilical region, grievous.

iii) Incised stab wound, 1 x 1 x 1 cm. left hand, grievous."

11. The same are also described in column No. 3 of the post-mortem notes. The doctor at Uran, in fact, took out the knife which was stuck in Kishor’s body. Thus, from all this evidence, it sis clear that the deceased Kishor

died as a result of the blows sustained by him. So we have no hesitation to hold that the death of Kishor was homicidal.

12. The main and the material question is whether the said death was caused at the hands of the accused. For this purpose, the Prosecution is mainly relying on the evidence of the two eye-witnesses and the dying declaration. If we see the evidence of these two witnesses, who are admittedly close relatives of each other as well as that of the deceased Kishor, we find that they have categorically stated that at the relevant time when they were going to the mother of the accused, Pravin came from the opposite side and asked them as to whether they brought Kishor and, on so saying, Pravin gave blows with the knives which were in his hands to Kishor and as a result of the same, Kishor ran towards the house of Jayaram Patil. They have also stated that thereafter the injured Kishor was taken from the said place to the S.T. stand Koproli and then they went to the Police Station and informed the Police about the incident. When the Police found that Kishor had sustained grievous injuries, the Police gave yadi and sent the injured Kishor to Indira Rural Hospital, Uran.

13. It was tried to be argued on behalf of the defence that these two witnesses cannot be believed, firstly, because it is difficult to believe that at the relevant time, i.e. at about 3 P. M., Sujit Patil (P.W.1) would go to temple. If we carefully read his cross-examination, then it is clear that he was proceeding towards the temple and not to offer prayers in the temple. Merely because he was proceeding accordingly towards the temple, we cannot jump to the conclusion that there was no reason for him to proceed in that direction. Moreover, as earlier, the Accused had given a blow with a broom on his forehead, he was returning to his house and on the way, other eye-witnesses and the complainant's mother met them. Naturally, they went towards the house of the accused to ask him as to why he behaved in such a manner. This conduct appears to be quite natural. There is nothing in their cross-examination to indicate that they had hatched any conspiracy to rope in the accused falsely. Merely because of the fact that there were political factions and the accused was belonging to the rival group, we cannot jump to the conclusion that the Prosecution witnesses have falsely involved the accused in such an offence leaving aside the real culprit.

14. Shri. Pendse, learned advocate for defence

vehemently argued before us that there is another reason to disbelieve the evidence of the alleged eyewitnesses. As per the evidence, the incident took place near the stall of the accused, but the Panchanama of the said place does not indicate that blood-stains were found at that place. It is true that if injuries mentioned in the certificate (Exhibit 51/C) would have been received by Kishore, normally there would have been blood-stains at that place. It is also correct that the doctor has stated that if a blow is given with the knife (Article 1), then there is possibility of finding a trail of blood from the place where blow is inflicted upto the place where the injured sat down, but at the same time he has stated that there would be no blood if the knife is not removed from the body. Admittedly, from the evidence of the doctor as well as from the evidence of P.W.1, it is clear that when the injured was taken to Indira Hospital, the knife was stuck in the body of the injured and it was removed by the doctor. There is no reason to disbelieve the doctor. It is correct that there is some overwriting in the relevant entry made in the MLC Register (Exhibit 53), but the said overwriting is not in respect of the material portion. It only shows that the doctor was not so firm while describing the injuries and initially he might have committed mistake in using appropriate word.

Instead of mentioning incised wound, he mentioned punctured wound and so there is some overwriting. Merely because such thing has happened, we cannot jump to the conclusion that the doctor has given false evidence to support the Prosecution. On the contrary, considering the fact that he is an independent witness, and it is not at all shown by the defence that the doctor was under an obligation of the Police, due weightage shall have to be given to the evidence of the doctor. Besides this, we find that the evidence of the above-mentioned two eye-witnesses is not at all shaken or shattered in cross-examination. Nothing has been brought in their evidence which will indicate that they are got-up witnesses and their testimony is not creditworthy. Hence we accept the said evidence.

15. Turning to the evidence of dying declaration, it is very clear that the Investigating Officer as well as the Medical Officer have followed proper procedure and taken all precautions while recording the dying declaration of the injured Kishor. It is very clear that the dying declaration in question is very short one, but the injured Kishor has specifically stated the name of the assailant and the manner in which he was assaulted. Merely because he has described only one injury in the

dying declaration, the said dying declaration cannot be said to be untrustworthy. Similarly, merely because the doctor has said that the patient was gasping that does not mean that he was not in a position to understand the question and to give correct reply. Due weightage shall have to be given to the endorsement of the doctor wherein he has mentioned **"patient was conscious- oriented to give evidence."** It is needless to say that the law with regard to dying declaration is very clear and there are various authoritative pronouncements wherein it is stated that conviction can even be based solely on a dying declaration, provided the same appears to be trustworthy and there is no possibility of tutoring. Incidentally, it must be mentioned that at one stage it was argued that at the relevant time the injured was not in a position to give statement but a suggestion is given to the witness that the injured was tutored by the witnesses. So, having regard to all these aspects, we have no hesitation to hold that the dying declaration in this case is genuine and trustworthy and the same has to be accepted.

16. It is pertinent to note that the First Information Report in the instant case was lodged within two hours from the incident. Prompt lodging of the First Information Report also lends support to the Prosecution

story.

17. It is true that as per section 157 of the Code of Criminal Procedure, it is necessary to send a copy of the First Information Report to the concerned Magistrate immediately. However, in the instant case, if we see the said copy, it bears the endorsement dated 10.2.1998 about the receipt of the same by the concerned Magistrate. So it was suggested that there was delay of twelve days, but we cannot ignore the fact that the Investigating Officer has stated that it was sent by him immediately. Unfortunately, there is no specific evidence with regard to the date of sending the First Information Report, but we also cannot ignore the fact that it may be that though it was sent immediately, there may be delay in making endorsement of receipt of the same. What is more to be noted is that it is nowhere even suggested to the complainant-Sujit Patil (P.W.1) or to the Investigating Officer that the document First Information Report (Exhibit 28) is not genuine or it is a document prepared subsequently. On the contrary, in the cross-examination, a suggestion was put to the said witness that the said document was recorded at about 4-45 P.M. when he had gone to the Police Station. So there is nothing to indicate that the First Information Report (Exhibit 28)

has come into existence not on 29-1-1998, but subsequent to that period. When such is the position, the mere fact that the entry or the endorsement made in the Court of the learned Judicial Magistrate, First Class, Uran shows that it was received on 10-2-1998 would not be enough to jump to the conclusion that the document (Exhibit 28) is not genuine or that it has been prepared subsequently. Besides this, even the Apex Court has observed in the case of **Balram Singh v. State of Punjab, A.I.R. 2003 S. C. 2213** that while considering the complant in regard to the delay in the FIR reaching the J. M. F. C., one has to bear in mind the creditworthiness of the ocular evidence adduced by the Prosecution and its creditworthiness. The element of delay in registering a complaint or sending copy to J.M.F.C. by itself would not in any manner weaken the Prosecution case. As in this case we have accepted the evidence of the eyewitnesses and the dying declaration, even if it is assumed that there was delay in sending the copy of F.I.R. to the concerned J.M.F.C., that will not change the fate of this case.

18. If we see the Panchanama of the discovery then also it is very clear that the accused produced the clothes which were concealed below the stone at a culvert. It is

true that when the said clothes were sent to the Chemical Analyser, he could not detect blood of any particular group on the same. It is clear that some human blood-stains were found on the banian of the accused. The accused has not given any explanation about the same. There is nothing to indicate that at the relevant time, the accused had received any injury. So, under such circumstances, the finding of human blood on the banian of the accused is a strong circumstance against the accused when read coupled with the other evidence.

19. There are some minor discrepancies in evidence. At one stage, it is mentioned that the weapon before the Court is knife but it appears that the same is called "**SURI**". However, in our opinion, it is not so significant which would create any doubt about the Prosecution version particularly when we find that the doctor has specifically stated that the injuries in question are possible with the weapon which is before the Court. It is true that there is some discrepancy in the measurement of the injuries mentioned in the post-mortem notes, but the fact remains that at the relevant time the deceased had sustained incised wounds on the portion of a body mentioned in both the above-mentioned documents. Merely because there is discrepancy, we cannot jump to

the conclusion that the evidence in that behalf is not trustworthy. What is more to be noted is it is well-settled that if there is some discrepancy in medical evidence and ocular evidence, the ocular evidence must prevail.

20. Learned advocate for the accused submitted that even if it is held that the injuries in question were caused at the hands of the accused, still the accused cannot be convicted for the offence punishable under section 302 of the Indian Penal Code, but at the most he can be convicted for the offence punishable under section 304 (II) of the Indian Penal Code. Needless to say that while considering this aspect, one has to take into consideration all the facts and circumstances, including the conduct of the accused. In the instant case, the doctor has stated that blows must have been given by force and were on vital parts of the body. Having regard to the earlier quarrel between the accused and the complainant side, nature of weapon used, the number of blows given on vital part of the body, etc., in our opinion, the offence cannot be reduced from section 302 of the Indian Penal Code to one under section 304 (II) of the Indian Penal Code.

21. Thus we find that the learned trial Judge has considered the entire evidence properly, and correctly held that the accused is guilty of the offence punishable under section 302 of the Indian Penal Code and section 37 (1) read with section 135 of the Bombay Police Act.

22. In view of above, the appeal is dismissed. The order of conviction and sentence passed against the appellant-accused by the trial Court is maintained.

(S. R. SATHE, J.) **(S. B. MHASE, J.)**